

TENTATIVE RULINGS

FOR: April 16, 2012

Please note that the court will strictly enforce filing deadlines for papers filed in support of and in opposition to law and motion matters, and may exercise its discretion to disregard a late filed paper, pursuant to California Rules of Court, rule 3.1300(d).

When calculating filing deadlines for papers to be filed within a certain number of court days from a hearing date, parties should exclude court holidays.

Court Reporting Services - As a result of statewide budget reductions, official court reporters are no longer provided by the Court in proceedings for which such services are not legally mandated. These proceedings include civil law and motion matters. If counsel wish to have the hearing on their civil law and motion matter reported, they have two options:

- Elect to use the services of a private local court reporter that the Napa County Bar Association has arranged to be present for the duration of all scheduled law and motion hearing calendars. There is a fee paid by the party directly to the court reporter for this service, and arrangements for payment can be made on the day of the hearing. For further information about the Bar Association program including fees, [click here](http://napacountybar.org/court_reporting.php) (http://napacountybar.org/court_reporting.php)
- Arrange for a private court reporter of their choosing to be present.

Attorneys or parties should confer with each other to avoid having more than one court reporter present for the same matter.

CIVIL LAW & MOTION – Dept. B (Historic Courthouse)

Nantz v. Moto Meccanica

26-54491

PLAINTIFF’S MOTION TO DEEM MATTERS ADMITTED AND FOR SANCTIONS

TENTATIVE RULING: This matter was continued from April 11, 2012, to allow defendant an opportunity to provide a verification to its responses to plaintiff’s request for admissions, set one. If no verification is filed before or at the hearing, the motion shall be GRANTED, as prayed. If a verification is filed, the motion will be denied. In either case, defendant shall pay sanctions to plaintiff in the amount of \$500.

**CIVIL LAW & MOTION – Dept. E (Criminal Courthouse -
1111 Third Street)**

Shipman, et al. v. Napa County, et al. **26-52881**

1) PLAINTIFFS' MOTION TO SET ASIDE RULING ON DEMURRER

TENTATIVE RULING: Plaintiffs seek to set aside this court's February 17, 2012 ruling sustaining defendants' demurrer to the Second Amended Complaint without leave to amend. Plaintiffs rely exclusively on Code of Civil Procedure section 473, which allows a court to act to relieve a party from his or her own mistake. Here, plaintiffs contend that the court erred in sustaining the demurrer. Section 473 does not provide a means for correcting an alleged error by the court, and the motion may be denied on that basis alone. However, given that the motion was filed within 10 days of the court's ruling, the court will treat this motion as one for reconsideration under section 1008.

A motion for reconsideration under section 1008 may be granted only upon a showing of new or different facts, circumstances, or law. Here, plaintiffs re-argue the points raised in their original opposition to the demurrer and in their oral argument at the hearing on the demurrer. Plaintiffs present no new or different facts, circumstances, or law. Accordingly, reconsideration is denied.

Defendants request for sanctions is denied.

**2) DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' VERIFIED
MEMORANDUM OF COSTS ON APPEAL OR, IN THE ALTERNATIVE, TO DENY
OR TAX COSTS**

TENTATIVE RULING: Defendants' motion to strike plaintiffs' memorandum of appellate costs as untimely is granted as to plaintiffs Shipman and Huang, who reside at the address used by the appellate court when it mailed a copy of the remittitur on January 5, 2012. As to the remaining two plaintiffs, Tompkins and Johnson, the court of appeal did not send the remittitur to their addresses of record and they cannot, therefore, be deemed to have received notice of the remittitur until this court sent them notice on January 23. As to Tompkins and Johnson, the memorandum of costs is, therefore, deemed timely.

Plaintiffs' total claimed costs on appeal are \$18,000, representing \$1,000 for filing fees, mailing and notary fees and \$17,000 for preparation of briefs and exhibits totaling 2346 pages at \$7.25 per page. The court will strike one half of those costs attributable to Shipman and Huang (\$9,000), and will attribute to plaintiffs Tompkins and Johnson, the remaining \$9,000 in costs claimed, which will be taxed as set forth below.

As to the \$500 remaining for claimed costs of filing, mailing and notary, the court grants the fees in full. As to the \$8500 for preparation of briefs and exhibits, the court finds the claim of \$7.25 per page to be excessive. The court will allow that rate for the preparation of an original set of documents, which, according to plaintiffs' memorandum of costs,

totals 527 pages x 7.25 = \$3820.75, divided in half for Tompkins' and Johnson's share = \$1910.38. As to the cost for producing copies of those originals, the court will allow \$1.00 per page for the cost of copying and binding. This comes to \$1,834 for all copies, divided in half for Tompkins' and Johnson's share = \$917.00

To summarize:

- Amount stricken for untimely memorandum of costs filed by Shipman and Huang: \$9,000.
- Amount of remaining \$9,000 taxed as excessive: \$5,672.62
- Total costs allowed to Tompkins and Johnson: \$3,327.38